

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 429 of 1989

In

SPECIAL CIVIL APPLICATION NO. 5128 OF 1989

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

and

MR.JUSTICE P.B.MAJMUDAR

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
No
 2. To be referred to the Reporter or not? No :
 3. Whether Their Lordships wish to see the fair copy of the judgement? : YES
No
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : YES
No
 5. Whether it is to be circulated to the Civil Judge? No :

PUNAMCHAND ASHOK MAHESHWARI

Versus

STATE OF GUJARAT

Appearance:

MR YS MANKAD for Appellant

MR ST MEHTA, AGP for Respondents

CORAM : MR.JUSTICE J.M.PANCHAL and

MR.JUSTICE P.B.MAJMUDAR

Date of decision: 07/12/1999

ORAL JUDGEMENT

(Per : Panchal, J.)

This appeal, which is filed under Clause-15 of the Letters Patent, is directed against judgment dated

July 19, 1989, rendered by the learned Single Judge, in Special Civil Application No. 5128/89, by which the order passed by the Collector, Kutch rejecting the application made by the appellant for allotment of land admeasuring 154 sq.mts. out of survey No.314 situated near Nutan Co.operative Housing Society at Bhuj, District : Kutch as confirmed by order dated March 29, 1989 passed by the Government in appeal filed by the appellant, is upheld.

2. The appellant, who was then serving as clerk in the Office of Sales Tax Officer, Gandhidham, made an application dated January 16, 1982 to the Deputy Collector, Bhuj and requested him to allot 200 sq.yds.of land out of survey No.314 situated near Nutan Co.operative Housing Society at Bhuj, District : Kutch. Along with the application, the appellant also produced a certificate indicating that he belongs to scheduled caste. In the application it was, inter-alia, mentioned by the appellant that as he belongs to scheduled caste, he was entitled to allotment of land in view of Government Resolution dated October 17, 1981. Detailed inquiry was made by the Deputy Collector and the City Survey Superintendent. The appellant submitted several reminders to the authorities, but the application made by him was not disposed of. Five years later, the Collector, Kutch at Bhuj rejected the application made by the appellant vide order dated February 12, 1987 on the ground that the land applied for by the appellant was encroached upon and, therefore, it was not possible to allot the same to the appellant. The appellant made another application to the Collector, Kutch on February 16, 1987 stating that the land should be allotted to him after removing encroachment. In the alternative, he also pleaded in the said application that land with encroachment be allotted to him and he would get unauthorised encroachment removed in accordance with law. The appellant did not hear anything from the Collector in response to his application dated February 16, 1987. He, therefore, contacted the persons who had encroached upon the land which was applied for by him and got them removed voluntarily from the land. The appellant thereafter got an affidavit sworn from those who had encroached upon the land to the effect that they had voluntarily vacated the land. The appellant thereafter made another application to the Collector for allotment of land on February 21, 1987 and annexed with it a copy of affidavit which was sworn in by those persons who had encroached upon the land applied for by the appellant and who had later on vacated the same at the instance of the appellant. On receipt of the application, necessary

inquiries were made by the competent authorities and a report was submitted to the Collector, Kutch mentioning, inter-alia, that the land applied for by the appellant was reserved for Government use and, therefore, it was not possible to allot the said land to the appellant, but another plot of land situated in Motilal Nehru Vyayam Shala area was available for allotment to the appellant. On receipt of the said report, Collector directed the Assistant Collector, Bhuj to ascertain from the appellant whether he was ready and willing to accept a plot of land situated in Motilal Nehru Vyayam Shala area. Therefore, the Assistant Collector addressed a letter dated October 12, 1987 calling upon the appellant to remain present before him, as he wanted to ascertain from the appellant whether he was ready and willing to take a plot of land in Motilal Nehru Vyayam Shala area. The appellant by his reply dated October 23, 1987 declined to accept the offer made by the Assistant Collector in respect of plot of land which was situated in Motilal Nehru Vyayam Shala area and requested the Assistant Collector to grant plot of land which was applied for by him earlier. The Collector, Kutch at Bhuj by his letter dated February 4, 1988 informed the appellant that his application for allotment of land made earlier was rejected, as the said plot was reserved by the Government for Government use. Feeling aggrieved by the above-referred to order of the Collector, the appellant preferred an appeal before the State Government under section 204 of the Bombay Land Revenue Code. The appeal filed by the appellant was rejected by the appellate authority. Therefore, the appellant preferred Special Civil Application No. 5128/89 and prayed the Court to issue a writ of mandamus or any other appropriate writ, order or direction cancelling the order passed by the Collector as confirmed by the appellate authority. The learned Single Judge summarily dismissed the petition by judgment dated July 19, 1989, giving rise to the present appeal.

3. Mr. Y.S.Mankad, learned Counsel for the appellant vehemently submitted that after removal of encroachment, there was no reason for the Collector not to allot the land applied for by the appellant and, therefore, the impugned judgment deserves to be set aside. It was claimed that the case of the appellant squarely falls within the purview of Government Resolution dated October 17, 1981 and, therefore, the order passed by the Collector as confirmed by the appellate authority ought to have been set aside by the learned Single Judge. What was asserted was that other 9 persons belonging to scheduled caste were given different plots of land out of survey No.314, but only the

appellant was left out and as treatment meted out to the appellant is violative of the principles enshrined in Articles 14 & 15(4) of the Constitution, the appeal should be allowed. It was also sought to be argued that a small plot of land in the midst of 10 other plots could not have been reserved for Government use and reservation being illegal, the authorities should be directed to allot plot of land applied for by the appellant.

4. Mr. S.T.Mehta, learned Counsel for the respondents pleaded that the averments made in Para-2 of the petition make it clear that a person belonging to scheduled caste is entitled to allotment of land admeasuring 100 sq.mts. on fulfilment of certain conditions and as the appellant did not fulfil the conditions stipulated in the said resolution, the learned Single Judge was justified in not entertaining the petition. The learned Counsel for the State Government emphatically contended that after removal of encroachment, the plot of land which was applied for by the appellant was reserved by the Government for Government use and as it was not possible to allot the said piece of land to the appellant, the appellant was offered another piece of land, but the appellant had shown unwillingness to take the land and, therefore, the Collector was justified in rejecting the application made by the appellant for allotment of land. The learned Counsel for the respondents stressed that cogent reasons have been given by the learned Single Judge while dismissing the petition and, therefore, well-founded judgment rendered by the learned Single Judge should not be interfered with by this Court in the present appeal.

5. We have heard the learned Counsel for the parties at length. We have also taken into consideration the relevant resolutions which were brought to our notice by the learned Counsel for the parties during the course of hearing of appeal. It is relevant to notice that the first application for allotment of land was made by the appellant on January 16, 1982. At that time, land applied for was encroached upon and it was not possible for the Collector to allot the said land. Though the appellant had got encroachment removed by his efforts, land applied for was subsequently reserved for government use and, therefore, the appellant was called upon to remain present before the Assistant Collector, Bhuj for ascertaining his wish as to whether he was inclined to accept another piece of land. On receipt of necessary communication from the Assistant Collector, Bhuj, the appellant had addressed a reply dated October 23, 1987 and in unequivocal manner declined to accept the offer of

another plot situated in Motilal Nehru Vyayam Shala area. In our view, therefore, the Collector was justified in rejecting the application which was made by the appellant for allotment of land from Survey No. 314 situated near Nutan Co-operative Housing Society at Bhuj, District : Kutch. The submission that other persons belonging to scheduled caste were allotted land and, therefore, the appellant should have been allotted land, is devoid of merits. As averred by the appellant himself in Para-2 of the petition, a member belonging to scheduled caste is entitled to allotment of land admeasuring 100 sq.mts. only. Initially, the appellant had applied for allotment of land admeasuring 200 sq.yds. and subsequently he had changed his demand by making application for allotment of land admeasuring 154 sq.mts. In view of the different resolutions which are referred to by the appellant in the petition, a member belonging to scheduled caste cannot be allotted land admeasuring more than 100 sq.mts. It hardly needs to be emphasised that this is a petition under Article 226 of the Constitution and Court while exercising powers under Article 226 of the Constitution cannot direct the authorities to perpetuate illegality. Now, plot which was originally applied for by the appellant is reserved by the Government for Government purpose and, therefore, we are of the opinion that the learned Single Judge was justified in summarily dismissing the petition. We may state that the appellant has no vested right for allotment of plot No.2 of Survey No.314 and after considering relevant factors, the Collector declined the demand made by the appellant for allotment of land. The order passed by the Collector as confirmed by the appellate authority cannot be said to be arbitrary or unjust so as to call for interference of this Court in the present appeal. The learned Single Judge has considered all relevant factors before dismissing the petition and, therefore, the appeal cannot be entertained and is liable to be dismissed.

For the foregoing reasons, the appeal fails and is dismissed, with no orders as to costs.

(patel)